offices for about six times this amount. The life dropped within twelve months. So, too, the wife of Palmer died after the payment of the first premium on a large insurance effected by the husband. It is impossible almost to avoid the horrible suspicion that the verdicts of the coroner's juries on these two cases are well founded, and that both were the victims of a murderer, for the sake of the insurances; and further, that he had in contemplation the death of Bates. Wainwright's atrocities years back, too, are not forgotten; and there are certain directors of insurance offices who could unfold tales of no imaginary horrors, which have of late incidentally come to their knowledge, though they have never been, nor will now be, brought to light. Such facts as these at least suggest to our minds that there is a stringent need for insurance offices to mend their ways themselves, if they do not wish to have them mended by the law.

RECENT AMERICAN DECISIONS.

Louisville Chancery Court, Kentucky, August, 1856.

FRAUDULENT CONVEYANCE AND ASSIGNMEMT FOR THE BENEFIT OF CREDITORS.

HOOPER, SON & CO. *vs.* ROSENTHAL, ETC.

1. Whether a debtor who has made a fraudulent conveyance can afterwards assign the property so conveyed, to be applied to the payment of his debts, or not?
2. Is there any difference between the conveyance of such property to others in trust for the payment of debts, and a conveyance directly to the creditors themselves?
3. A conveyance of property of every kind whatsoever in trust for the payment of debts will include property previously conveyed to defraud creditors, unless it is held adversely by the fraudulent vendee.
4. The British doctrine with regard to assignments for the benefit of creditors, and the American doctrine.
5. The opinion of Chancellor Kent, in Bayard *vs.* Hoffman, 4 Johns. Ch., 450, adhered to, notwithstanding subsequent decisions.

PIRTLE, Chancellor.—Rosenthal made a deed of assignment to Mendell in trust for the payment of his debts, in which certain preferences were made among his creditors. The plaintiffs were

not satisfied with the deed, and attacked it as fraudulent; but it was sustained by the court. Judgment, however, was rendered against Rosenthal for the debt of the plaintiffs, and they sued an execution thereon, and levied it upon a slave which had been conveyed by Rosenthal to Kremer before the deed of assignment was made. This conveyance to Kremer, they say was fraudulent, made to cheat creditors, and the slave is liable to the execution. The deed of assignment, after mentioning many specific articles of property conveyed by it, declares that it includes all the property of the said Rosenthal, "of every description, name and nature whatsoever." The slave was a very short time in possession of Kremer, and was in possession of Rosenthal at the date of the deed of assignment.

The question for the court to decide, so that the jury may have the matter before them, is whether the deed of assignment would include the slave, and so she would not be liable to the plaintiff's execution, if the sale to Kremer was a mere sham, and made to defraud creditors.

It has been often stated that, as the party who has made a fraudulent deed cannot allege his own fraud, he has no power to dispose of the property conveyed by such deed by a new conveyance, on his own mere motion; that a purchaser for valuable consideration may hold against such deed, but those who come under a conveyance merely at the instance of the fradulent vendor cannot gainsay his deed any more than he could himself. And this is true generally. But can the creditors in this instance come under the rule that places the grantee in the same position as the grantor? They are not volunteers in the sense in which that word is generally applied. They stand in a meritorious condition. The payment of just debts is as proper a duty as any other; and where a deed conveys property for this purpose, it cannot, in any propriety of language, be called a merely voluntary deed, without consideration, and which is to be esteemed no better in court than a previous deed that was made to defraud these creditors. The previous deed, the law says, is void, as to the creditors; but public policy will not allow the vendor to say so, as between him and the vendee. He

cannot reclaim the property for himself; it is right he should be so punished for having committed the fraud. But if he should convey the property, for a valuable consideration, to a purchaser who bargains with him, this purchaser can hold, because of the valuable consideration. Now, why may not the creditors have the property devoted to the payment of their debts by this deed? They claim for a valuable consideration. The sale was unreal; it was void, as far as their debts were concerned. It was so far void, as to leave the property in the vendor, to be conveyed to the purchaser for value, because he would stand in a meritorious position. Do not these creditors, against whose debts the sale was void, stand in as meritorious a position? Is it not better that property generally, which has been fraudulently sold, should still be so devoted in the hands of the assignee, than that the title should be in the fraudulent vendee, and the property left subject to be used and worn out, or destroyed, or to be sold by him, as it might be, to a *bona fide* purchaser, and thus be put out of the reach of creditors altogether? To say that the fraudulent grantor, whose deed is void as to creditors and purchasers, cannot convey for the benefit of creditors, seems to me to yield to a notion unprofitable in practice, and merely artificial.

If the conveyance were immediately to the creditors, in consideration of their debts, it would be difficult to say they could not hold. The statute does not say the fraudulent conveyance shall be held void *in an action* brought by creditors; but that it shall be void as to them. If they could not hold under a deed from the fraudulent grantor, then this absurdity would appear: that a stranger might buy for valuable consideration, whether he knew of the fraudulent deed or not, but a creditor, in consideration of his debt, meant to be protected by the statute, could not buy, even if he did not know of such deed.

There is no difference in America, as to the rights of the creditors, whether the deed of assignment is made to the creditors directly, or made to assignees, for their benefit, when they are not parties to the deed. The title passes in each case for their benefit, and they are not deemed volunteers, but will be aided in equity, as

others who claim its aid for valuable consideration. This is the constant practice. I need not cite more cases, than *Bayley* vs. *Greenleaf*, 7 Wheat. 46; *Marbury* vs. *Brooks*, 7 Wheat. 556; *Brooks* vs. *Marbury*, 11 Wheat. 78; *Ingram* vs. *Kirkpatrick*, 6 Iredell's Eq. Rep. 463. This is so well established in Kentucky, that authority need not be cited from our courts. See Burrill on Assignments, chap. 26.

In England, where the creditors are not parties to the deed of assignment, it is looked upon as a deed of *agency* merely, for the benefit of the debtor, in having his effects applied to the payment of his honest debts, and the Court of Chancery will not generally carry out, or recognize, a trust for the creditors, but will, at any rate, permit the grantor to change or revoke the disposition made of the property, where creditors will not be in any worse condition by anything done by themselves or their agents in reliance on the deed. But in that country, where the creditors are parties to the deed, the trust arises as it does here, and the deed is not deemed voluntary. See *Mackinnon* vs. *Stuart*, 20 Law J. (N. S.) Chanc., cited in Burrill on Assignments, 216.

I think that creditors claiming under the deed of assignment, whether made to trustees or to themselves, would be treated as volunteers, in some instances. A mistake made between their grantor and a previous party, or a fraud practiced on the previous party, would be corrected as to them in some cases, when it would not be as to a purchaser who had paid a new consideration. Other equities, such as the lien of a previous vendor, which did not appear of record, or of which no notice was had, would not be protected, as was decided in the case of *Bayley* vs. *Greenleaf*, in the Supreme Court of United States, before cited. The case of *Twelve* vs. *Williams*, 3 Wheat. 492, is otherwise, and holds the creditors to be mere volunteers; the case in 7 Watts & Serg. 372, is to the same effect. The cases of *Brownell* vs. *Curtis*, 10 Paige, 210, is also to the same amount, and goes on to say, "It is a general rule of law, that a person cannot, by any voluntary act of his own, transfer to another a right which he does not himself possess." "And when an insolvent debtor has made a fraudulent transfer of

his property, or has discharged his own debtor from his liability, for the purpose of defrauding his creditors, so that he cannot reclaim the property, or sustain a suit for the debt in his own name, he cannot by an assignment, which is wholly voluntary on his part, take away the right of his creditors generally to set aside the fraudulent transfer, or recover the debt fraudulently discharged, and transfer that right to his own assignee for the benefit of his creditors."

The same doctrine is substantially laid down in *Browning* vs. *Hart*, 6 Barbour's S. C. 91; and *Leach* vs. *Kelsey*, 7 Barb. S. C. 468.

This is plausible, because, at first sight, it indicates equality between the creditors in respect to the property fraudulently conveyed. But it is not so. The attaching or levying creditor would take all.

If the fraudulent grantor could convey to others, it is not sufficient reason for saying he shall not have the power to convey to his creditors, whom he had thought of defrauding, because he may then prefer one to another. This results, if a statute does not say he shall convey, if at all, to all *pro rata*. Is it not proper that he should have this *locus pœnetentiæ*, and be permitted to retrieve the wrong he had intended his just creditors? If it is right that the property should be distributed equally among all the creditors; yet the doctrine, as laid down in the cases cited, would not permit this, because it rests upon the ground that he has no power to convey, on his own motion, what he has already granted by a void sale. This is the whole reason, at last, for the doctrine.

Chancellor Kent, in the case of *Bayard* vs. *Hoffman*, 4 Johns. Ch. 450, held that stocks, which had been previously conveyed in voluntary settlement by a debtor, did pass to his assignees, for the benefit of his creditors, by general words, broad enough to include the stocks, if they had been in his own hands. This case Chancellor Walworth thought (10 Paige, 210) was not well considered; but from the character of the counsel engaged, and the general habit of Chancellor Kent, I think it must have been well considered. It may have escaped me; but I do not now recollect any English de-

cision against this doctrine of Kent; I mean on the property passing to the creditors. The Court of Appeals of Kentucky approve the doctrine stated in the case of *Bayard* vs. *Hoffman*, in regard to the effect of the general words, without any further inquiry as to the intention of the grantor. See *Lexington Life, Fire and Marine Ins. Co.* vs. *Page & Richardson*, 23 Jan. 1856; not yet published.

There might, indeed, be cases in which the general words, or any other words, would not include the property fraudulently conveyed. As, for instance, where the property is really at the time in adverse, unfriendly possession, as it might be so held by the fraudulent vendee; for, according to repeated decisions of the Court of Appeals in this State, personal property held adversely cannot be conveyed by the owner, as it is reduced to a chose in action. 1 Lit. 298, *Young* vs. *Ferguson;* 2 B. Mon. 156, *Waggener* vs. *Hardin;* 4 B. Mon. 462, *Hewitt, &c.* vs. *Studevant, &c.* The contrary doctrine was strongly stated by Judge Story, 2 Sumn. 211, *The Brig Sarah Ann.*

But where the parties to the fraudulent conveyance both look upon it as a mere sham, and the property is left in the possession and control of the grantor as his other property is, it may well pass to assignees, when other property that has gone to the possession and use of the grantee,—it may be for valuable consideration, even, though fraudulent,—would not pass by the deed of assignment.

In this case, if the sale to Kremer was not held by either party to be real, but was only to deceive creditors, the property passed to the assignee by the deed in behalf of creditors, and is not subject to the execution.